

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOSHUA I. PAYNE,
Plaintiff

v.

M. GOURLEY, et al.
Defendants

: No. 1:23cv532
:
: (Judge Munley)
:
: (Magistrate Judge Bloom)
:
:

ORDER

AND NOW, to wit, this 2nd day of January 2024, before the court for disposition is the report and recommendation of United States Magistrate Judge Daryl F. Bloom (Doc. 28), recommending that the court grant the partial motion to dismiss the amended complaint filed by the defendants. (Doc. 22). No objections to the report and recommendation have been filed and the time for such filing has passed.

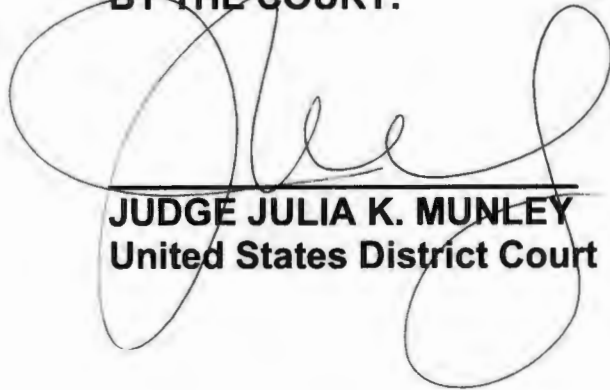
In deciding whether to adopt the report and recommendation when no timely objection is filed, we must determine if a review of the record evidences plain error or manifest injustice. FED. R. CIV. P. 72(b), 1983 Advisory Committee Notes ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record to accept the recommendation"); see also 28 U.S.C. § 636(b)(1); Sullivan v. Cuyler, 723 F.2d 1077, 1085 (3d Cir. 1983).

After a careful review, the court finds neither a clear error on the face of the record nor a manifest injustice. Therefore, the court shall accept the report and recommendation and adopt it in its entirety. It is hereby **ORDERED** that:

- 1) The report and recommendation (Doc. 28) is **ADOPTED** in its entirety.
- 2) Defendants' partial motion to dismiss the amended complaint for failure to state a claim (Doc. 22) is **GRANTED** as follows:
 - a. Plaintiff's First Amendment, Americans With Disabilities Act, Rehabilitation Act, Mental Health Procedures Act, and civil conspiracy claims are **DISMISSED**;
 - b. Plaintiff's Eighth Amendment claim against Defendant Wimer and any related failure to intervene claim against Defendants Gourley, Nicklow, Newsome, Ritchey, and Kendall are **DISMISSED**.
 - c. Plaintiff's requests for compensatory damages and declaratory relief are **DISMISSED**.
 - d. Otherwise, plaintiff's Eighth Amendment claims regarding the denial of meals, showers, and yard time, and his claims for being placed in a dirty cell shall proceed forward. Moreover, plaintiff's Fourteenth Amendment claim premised on Payne's right to privacy in his medical records shall proceed forward.

3) This matter is **REMANDED** back to Magistrate Judge Bloom for further proceedings.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Julia K. Munley', is written over a horizontal line. The signature is fluid and cursive, with the first letter 'J' being particularly large and looping.

JUDGE JULIA K. MUNLEY
United States District Court